

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Karen S. Randolph,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 2:07-cv-0424
	:	
Michael J. Astrue,	:	JUDGE MARBLEY
Commissioner of Social Security,	:	MAGISTRATE JUDGE KEMP
	:	
Defendant.	:	

ORDER

This matter is before the Court to consider de novo plaintiff's objections to a Report and Recommendation of the Magistrate Judge recommending that judgment be entered in favor of the defendant Commissioner. For the following reasons, those objections will be overruled and judgment will be entered for the defendant.

Plaintiff argues, in her objections, that the Commissioner did not have a substantial basis for adopting the opinion of Dr. Nusbaum, the medical expert who testified at the administrative hearing, as opposed to crediting the opinion of Dr. May, who was plaintiff's treating physician. Plaintiff contends that the record does not support the Commissioner's rejection of Dr. May's opinion, and that even if it did, the Commissioner failed to follow the dictates of 20 C.F.R. §404.1527(d) by articulating the reasons for discounting Dr. May's opinion. See generally Rogers v. Comm'r of Social Security, 486 F.3d 234, 242 (6th Cir. 2007). In response, the Commissioner notes that Dr. Nusbaum's opinion itself provided a sound basis for discounting Dr. May's opinion, and that, as the Report and Recommendation noted, the ALJ's clear reliance on the substance of Dr. Nusbaum's testimony was sufficient to satisfy Rogers' requirement that the Commissioner

provide an adequate explanation for rejecting the opinion of a treating physician.

The Court concludes that the Commissioner has the better argument here. Dr. Nusbaum extensively discussed Dr. May's primary diagnoses, which included degenerative disc disease and hepatitis C, and noted that the record supported few, if any, limitations arising from those conditions. The disc disease was neither extensive nor unusual for a person of plaintiff's age, and the hepatitis and treatment did not justify restricting plaintiff to less than a full range of sedentary activity. These are legitimate reasons for according less than controlling weight to the opinion of a treating physician, and the plaintiff was clearly advised in the administrative decision of the reasons for the Commissioner's decision not to adopt Dr. May's report. Consequently, the Commissioner complied both with Rogers and the underlying regulation, and had a substantial basis for concluding that plaintiff was not disabled.

For these reasons, plaintiff's objections to the Report and Recommendation of the Magistrate Judge are OVERRULED, and the Report and Recommendation is ADOPTED. The plaintiff's statement of errors is OVERRULED, the decision of the Commissioner is AFFIRMED, and the Clerk is directed to enter judgment in favor of the defendant.

s/Algenon L. Marbley
Algenon L. Marbley
United States District Judge